

Kurt M. Mullen, Esq.
Samuel Goldblatt, Esq. (*pro hac vice*)
W. Scott O'Connell, Esq. (*pro hac vice*)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
Telephone: (617) 345-1131

Leah Threatte Bojnowski, Esq. (*pro hac vice*)
NIXON PEABODY LLP
437 Madison Avenue
New York, NY 10022-7039
Telephone: (212) 940-3722

Attorneys for Defendant Cummins Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

T.J. McDERMOTT TRANSPORTATION CO., INC.,
DEMASE WAREHOUSE SYSTEMS, INC., HEAVY
WEIGHT ENTERPRISES, INC., P&P ENTERPRISES
CO., LLC, YOUNG'S AUTO TRANSPORT, INC.,
HARDWICK ALLEN, AND JOSE VEGA,

Plaintiffs,

vs.

CUMMINS, INC., and PACCAR, INC. d/b/a
PETERBILT MOTOR COMPANY AND
KENWORTH TRUCK COMPANY,

Defendants.

Civil Action No.:
2:14-cv-04209
(WHW)(CLW)

**NOTICE OF
CUMMINS INC.'S MOTION TO
STRIKE PURSUANT TO FED.
R. CIV. P. 12(f)**

**Return Date: November 7, 2016
Oral Argument Requested**

TO: ALL COUNSEL IN THE CAPTIONED MATTER:

PLEASE TAKE NOTICE that on November 7, 2016, or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant Cummins Inc. ("Cummins") will move this Court at the United States District Court for the District of New Jersey, Martin Luther King, Jr. U.S. Courthouse and Federal Building, 50 Walnut Street, Room 4015, Newark, New Jersey,

for entry of an Order granting Cummins' motion to strike paragraph 15 of Plaintiffs' Third Amended Complaint, specifically the words "and later model years" from the definition of "Subject Engines."

PLEASE TAKE FURTHER NOTICE that, for purposes of this Motion, Cummins will rely upon the accompanying brief and the Declaration of Leah Threatte Bojnowski, both of which are being filed and served herewith; and

PLEASE TAKE FURTHER NOTICE that Cummins requests oral argument regarding the Motion; and

PLEASE TAKE FURTHER NOTICE that a proposed Order is annexed hereto pursuant to L. Civ. R. 7.1(e).

Respectfully submitted,

CUMMINS INC.

By its Attorneys,

/s/ Kurt M. Mullen

Kurt M. Mullen, Esq.

Samuel Goldblatt, Esq. (*pro hac vice*)

W. Scott O'Connell, Esq. (*pro hac vice*)

NIXON PEABODY LLP

100 Summer Street

Boston, MA 02110

Telephone: (617) 345-1131

kmullen@nixonpeabody.com

sgoldblatt@nixonpeabody.com

soconnell@nixonpeabody.com

Leah Threatte Bojnowski, Esq. (*pro hac vice*)

NIXON PEABODY LLP

437 Madison Avenue

New York, New York 10022

Telephone: (212) 940-3722

lbojnowski@nixonpeabody.com

Dated: October 7, 2016